6.

THE PROCEEDINGS AGAINST THE RIGHT HONOURABLE THE Earl of Shaftsbury, AT THE OLD BAILY,

On *Thurſday* the Twenty fourth of *November*, 1681.

As they were taken by an *Impartial Hand*, and faithfully tranſmitted to every unbiaſſed Reader.

With Sufficient Reaſons to juſtifie the *Grand Jury* in bringing in the Bill *Ignoramus*.

LONDON,
Printed for *H. Jones*. 1681.

THE

PROCEEDINGS

OF THE

Earl of Shaftsbury,

AT THE

OLD BAILY,

At the Seſſions at the Old Bayly, *on* Thurſday, November *the Twenty fourth*, 1681. *held by Commiſſion of* Oyer and Terminer *within Term.*

THE Commiſſion being read, the Pannel of the *Grand Jury* was read over, which was as follows.

Sir *Samuel Barnardiſton* Baronet.
John Mordant Eſq.
Thomas Papillon Eſq.
John Dubois Eſq.
Charles Herle.
Edward Rudge.
Humphrey Edwyn.
John Morris.
Benjamin Godfrey.
Edmond Harriſon.
Joſeph Wright.
John Cox.
Matthew Gardiner, excuſed.
Samuel Swynock, excuſed.
Thomas Parker.
Leonard Robinſon.
Thomas Sheppard.
John Polixfen, out of Town.
John Flavell.
Michael Godfrey.
John Smith.
Joſeph Richardſon.
William Empſon.
Andrew Kenrick.
John Lane Eſq.
John Gardiner, excuſed.
John Hall.

William

William Aſhhurſt Eſq.
John Ellis Eſq.
John Deagle.
Thomas Weſton, out of Town.
Andrew Bonnel.
Gabriel Whitley.
Thomas Carpenter.
Laurence Baskervill.
Marwood Denby.
Peter Houblon.

The Gentlemen that were ſworn of this Jury were Twenty one, whoſe Names are as follows.

Sir *Samuel Barnardiſton* Baronet, Foreman.
John Mordant Eſq.
Thomas Papillon Eſq.
John Dubois Eſq.
John Herle.
Edward Rudge.
Humphrey Edwyn.
John Morris.
Edmond Harriſon.
Joſeph Wright.
John Cox.
Thomas Parker.
Leonard Robinſon.
Thomas Sheppard.
John Flavell.
Michael Godfrey.
William Empſon.
Andrew Kenrick.
Joſeph Richardſon.
John Lane Eſq.
John Hall.

After they were ſworn, the Lord Chief-Juſtice *Pemberton* gave them their Charge, which was to this effect. That they were met here in one of the moſt Solemn Aſſemblies

Aſſemblies of this Nation: That it was for the Execution of Juſtice upon Offenders, if found Guilty: That the nature of the *Commiſſion* whereby the *Commiſſioners* ſate, and the *Grand Jury* were ſummoned, doth extend to all Offences whatſoever, *Treaſons*, *Miſpriſions of Treaſons*, *Felonies*, and all other Crimes and Offences againſt the King and Government; in ſhort, all that are called *Pleas of the Crown*; all theſe, he told them, fall under the Cogniſance of the Commiſſioners, and the Inquiry of the Grand Jury; but did acquaint them, That there was a particular Occaſion for the Iſſuing out of the Commiſſion at this time, His Majeſty having received an Information, That there were ſome evil and moſt Traiterous Deſigns againſt His Perſon and Government: He did therefore think fit to have a due Examination of them, that ſo the Perſons might be brought to condign Puniſhment, if found guilty thereof. He did farther acquaint them, That they muſt not expect any Formal Charge from him, he expecting that they had received their Directions before they came, for that it had been the common Uſage for the *Grand Jury* to be ſworn and receive their Charge before His Majeſties Juſtices came upon the Bench; but ſince he found it otherwiſe, he ſhould not make any ſet formal Charge, nor give any Account of all the Offences that fall under the Inquiry of the *Grand Jury*, by ſuch a *Commiſſion*, at *Common Law*; neither muſt they expect that he ſhould acquaint them with all the Crimes that they might inquire of, but that it would be ſufficient to tell them the particular Matter of which they were then to inquire, and their Duty concerning that Inquiry. He told them, that he had hinted at firſt, that they were Matters of *High Treaſon*, which is a Crime of the higheſt nature that can be committed againſt Man; That other Crimes, as Felonies, and things of that nature, may make Diſorders and Troubles in a State or Kingdom, but that Treaſons ſtrike at the very Root and Life of all, and are that which deſtroys the Government, and therefore have in all Ages been looked upon as Crimes of the

higheſt nature that can poſſibly be imagined, and accordingly Puniſhments have been allotted to them of the greateſt Severity. He did further acquaint them, That at the *Common Law* there were great variety of *Opinions* about *Treaſon*, and that there had been many Diſputes what was Treaſon, and what was not; and therefore it was thought fit by the Wiſdom of our Anceſtors to make a Law to declare what ſhould be Treaſon, which was done by the 25 *Edw.* 3. By that Law, for any one to compaſs or imagine or intend the Death of the King, (for he told them he would mention no more of that Statute than was agreeable to the preſent purpoſe) and to declare it by Overt-act, as to levy War againſt the King, and the like, is declared, among other things, to be *High Treaſon*; which Law hath obtain'd for Law amongſt us ever ſince, and that nothing had been accounted Treaſon but what was expreſſed in it, unleſs upon ſome emergent Occaſion, and inſtanc'd in the Laws made in the time of Queen *Elizabeth*, upon the occaſion of that inveterate Malice that the *Roman Catholicks* bore her; and likewiſe in that Law of the 13th. of His now Majeſty, for the making whereof, he told them, the Parliament had great grounds, as they declare in the Preamble of that Statute: for that the Wounds the Kingdom had received were then bleeding, and ſcarcely cloſed, many *Traiterous Poſitions* and Seditious Principles ſpread amongſt the People of this Realm, and that they had good reaſon to believe, that where they had been ſo maliciouſly bent againſt King *Charles* the Firſt, and had taken him off, and had maintain'd ſo long and dangerous a War againſt Him and His now Majeſty, almoſt to the deſtruction of all our *Liberties* and *Laws*, even to the utter overthrowing of this flouriſhing Kingdom, they ought to be careful to prevent the like Miſchiefs for the future, and therefore did think fit, whereas the Law before was, That it ſhould be Treaſon to conſpire, or to imagine, or to intend the *Death* of the *King*, ſo as it were declared by Overt-act; now becauſe it was dangerous to ſtay till an Overt-Act ſhould declare the Intention,

tention, for that they had proceeded ſo far as to take away one Kings Life, and baniſh another, and endeavour to root out the Government of this Kingdom; and therefore did Enact by the ſaid Statute of the 13th. of His now Majeſty, That if any one ſhall compaſs, imagine, or intend the Death of the King, or his Deſtruction, or any Bodily harm, that may tend to His Death and Deſtruction, any reſtraint of His Liberty, by Impriſonment, or otherwiſe; or if they ſhall deſign and intend to levy any War againſt Him, either within the Realm or without, or deſign or intend to procure any Foreign Prince or others to invade His Dominions, and ſhall ſignifie and declare this by any Writing, by any Printing, by any Preaching, or by any malicious and adviſed Speaking, and uttering Words to the ſame intent and purpoſe, this ſhall be *High Treaſon*; which, he told them, had altered the *Law* in two Caſes. 1. *As to levying War, the Intention was not Treaſon before, unleſs it took effect:* And, 2. *As to deſigning and compaſſing the Kings Death, which was not Treaſon unleſs declared by an Overt-act; and as to the impriſoning His Perſon, or reſtraining Him of His Liberty, the very deſigning of them alone are made Treaſon, whether they take effect or not: tho theſe ſhould be timely prevented, that there be no hurt done, yet the very Deſign, if it be uttered or ſpoken, is made Treaſon by this Act:* Which makes a great alteration in the Law. Formerly it was ſaid, *Words alone would not amount to Treaſon*; but ſince this Act, Words, if they import any malicious Deſign againſt the King, any traiterous Intention in the Party, are *Treaſon*. He did further acquaint the Jury, That this Act was made with the greateſt care and prudence imaginable, to take off that Liberty that People had taken to themſelves, in that time of Licentiouſneſs, wherein they were ſo bold to vent all their ſeditious and malicious Thoughts and Intentions each to other, without reſtraint; and therefore told the Jury, That they ought to conſider the Words, whether they ſignifie or purport any Traiterous Intention in the Party, either againſt the King or His Government, either to reſtrain His Liberty, or to do Him any Bodily hurt, or any thing of that nature, which he told them was Treaſon, within the *Act of Parliament*. And as to their Inquiry, they were in the Sphere they ſtood in upon Indictments

Indictments brought before them, to consider these things: Whether the Matter brought before them were within that Act of Parliament? And in that, if they doubted, they were to advise, as to Matters of Law, with those that were Commissionated by His Majesty: And that they were to inquire, Whether there were Two Witnesses to prove the Treason? because no Man without two Witnesses ought to be punish'd within that Law; but withal did observe to them, That it had been resolved by all the Judges of *England*, upon a most solemn Occasion, That it is not necessary that there be two Witnesses to prove the same Words spoken at the same time, or in the same place; but if one proves the Words that import a Treasonable Intention, spoken at one time, and in one place, and others at another time, and in another place, these are good Witnesses within the Statute to prove the Treason. He told them, That what was referr'd to them, was to consider what Evidence should be given them, and whether upon that Evidence there were not reason to call the Person to an Account? for if there were probable Grounds for it, that was as much as they were to inquire into: That they must consider this, That as it is a Crime to condemn Innocent Persons, so it is a Crime as great to acquit the Guilty; so that they ought to be as strict in the one as in the other. He farther told them, That if they should be refractory, and where there was a probable Ground for an Accusation, should undertake to intercept Justice by not finding the Bill, it would lie at their Doors; that they were under a double Obligation, one as they were *Englishmen*, and so Members of the same Body; they ought to consider, that Crimes of this nature ought not to go unpunished; the other, as they had an Oath of God upon them; they were sworn to Inquire truly according to their Evidence; and therefore if there were two Witnesses of Words that might import a treasonable Design or Intention in the Party, they were bound both by the Law of Nature, as they are Members of the same Body, and by the Law of *God*, as they have taken an *Oath*, to find the *Bill*. He told them, that it was neither their Province, nor those whom His Majesty had Commissionated, to be compassionate

passionate or pitiful, for that is reserved to a higher and superiour Power from which both theirs is derived; and therefore did require them to hear such Evidence as should be given, and to be impartial as to what they should hear from the Witnesses; and if there were ground sufficient to believe that there is reason for the King to call the Parties to answer what is objected against them, they were bound to find the Bills, and concluded with God Almighties Prayer to direct them.

After which he acquainted them, that the Kings Council (who were Sir *Fran. Withins*, Kt. Mr. *Saunders*, Mr. *Heath*, and Mr. *Jones*,) moved that the Evidence might be publickly given, that so there might be no occasion of slandering the Witnesses, which he told them was a motion ought not to be denied.

Then the Jury demanded a Copy of their Oath, which was granted them by the Court, and they immediately withdrew, and after a quarter of an hours stay returned, and Sir. *Sam. Barnardiston*, the Fore-man of the Jury, did acquaint the Court, that it was the opinion of the Jury, that it was their right to examine the Witnesses in private; for that it had been alwas the Practice both in City and Country, and they did insist upon it for this reason, because they were by their Oaths bound to keep the Kings Secrets, and their own, which it was impossible for them to do, if the Witnesses should be examined in Court.

To which the Ld. Ch. Justice *Pemberton* gave this Answer, That it might probably be, that the common usage had brought the Jury into that Error, that it was their right, and therefore did inform them, that it was not their right, but that it was done only to comply with the convenience of the Court; for generally upon all Commissions of the like nature, the business was much, and that upon Gaol-Deliveries, there were many Prisoners to be tried, and other things to be done, so that if at such a time they should examine all Witnesses in Court, that came before the Grand Jury, in order to finding the Bills, it would make the Commissions of too great a length, and that therefore the Judges have allowed this Practice, and not that it is their right; for that without question originally all Witnesses were examined in Court; and further told them, that it was for their advantage, as well as for the Kings, that it might be seen that they complied with their Evidence, and did nothing clandestinely; and besides that, the King desired it, and that they were bound to comply with his desire; but yet that they should have the same liberty in Court they could have in

private to ask the Witnesses what questions they pleased: And further told them, that as to keeping their Counsels, that was a thing of another nature, which were their own private Debates.

Then Mr. *Papillion*, one of the Jury, offered 4 things to the Court, the first was the same in substance with what Sir *S. Barnard.* had offered before. The 2d was, that it having been a common usuage, was now grown to be the Law of the Land, and that so not to be altered, & therefore desired the opinion of the Court; for that as they were not willing to do any thing that might be in the least prejudicial to His Majesty, so neither to the Liberty of the Subject. The third thing was, That this publick Examination might be prejudicial to His Majesty; for that sometimes upon private Examinations of Witnesses, the Jury have discovered persons guilty of Treasons, and misprisions of Treasons, which were not before discovered, and have thereupon sent down to the Court and acquainted them with them, and the Traitors have been secured, which by publick Examination (notice might have been taken) and been prevented. And the fourth thing was, That all the Evidence is hereby known before it comes to the main Tryal upon the issue, whereby this inconvenience may ensue that Persons may be brought to confront the Witnesses, and invalidate their Testimony.

To which the Lord Chief Justice *Pemberton* made answer to this effect, That if they had well considered what he had said before, he should have thought the objections to have been obviated; but as to keeping their own secrets they are bound but as to the Kings, if he please to make them publick, who shall hinder it? And as to the common usage he told them that there were divers presidents out of the allowance of publick examinations in these cases, and that he never heard it denyed before, and that the way antiently was to examine all in Court. The Lord Chief Justice *North* spake much to the same purpose.

Then the Jury demanded that it might be recorded that they did insist upon the examination of the Witnesses in private, which was denied by the Court, for this reason that they were not bound to record any thing but what was in order to proceeding upon the Indictment.

It was moved that the Witnesses might be kept out of Court, and but one brought in at a time, which was granted to the Jury.

Then the Bill was read against *Anth.* E. of *S.* the substance of which was to this effect, That he 18 *Mar.* 33 of this King, did

did Traiterouſly, &c. provide Arms, &c. and the ſame time did ſpeak theſe words, That the Parliament was to meet at *Oxford* within a ſhort time, and that he had conſidered of the inclinations, and diſpoſitions of the Perſons Elected, and that he was ſatisfied that the Parliament would inſiſt upon the ſame matters the former Parliament had done, which were the Bill of Excluſion, the repealing 35 *Eli.* and the paſſing the Bill for uniting Proteſtant Diſſenters, with other wholſome Bills, which he was certain the King would refuſe, and therefore he did expect that there would be breach between the Kings Majeſty, and his Parliament, and that many Noble Men, and worthy Members of the Houſe of Commons concurred in the ſame opinion, and that they had reſolved to inſiſt upon it, and if the King ſhould refuſe, than he the ſaid E. of *S.* and the ſaid Nobles, and worthy Members would compel the Kings Majeſty to conſent thereunto, and that on the part of him the ſaid E. of *S.* he would provide valiant Men to be Commanded by Captain *Wilkinſon*, and that *John Booth* ſhould be one; And further, that our Soveraign Lord the King is a Man of no Faith; and that there was no truſt in him, and that our Soveraign Lord the King deſerved to be depoſed, as *Richard* 2. late King of *England* was. And further that he the ſaid E. of *S.* never would deſiſt, till he had brought the Kingdom of *England* into a Common-wealth, and that the ſaid E. of *S.* and thoſe that would aſſiſt him the ſaid E. of *S.* would make this Kingdom a Common-wealth as *Holland* was, and that he the ſaid E. of *S.* and other Traitors unknown, would live as they do in *Holland*, and our ſaid Soveraign Lord the King and his whole Family would extirpate, and that our Soveraign Lord the King was a Man of an unfaithful heart, and not worthy to Reign and Govern, that he was falſe, unjuſt, and cruel againſt his People, and that if he would not be Governed by his People, he the ſaid E. of *S.* and others would depoſe him our ſaid Soveraign Lord the King againſt the duty of his Allegiance, &c.

After the reading of which Indictment the ſaid Kings Council inſiſted upon opening the Evidence to the Jury; but the Court denyed it.

After which, the Jury deſired a note of the names of the Witneſſes, which was denied them for this reaſon, that they muſt have the Indictment out with them, and their names are recorded on the back of the Indictment.

Then

Then Sir *Samuel Barnardiston* desired to see the Warran , upon which the E. of *Shaftesbury* was committed, and told them that they had great reason for that request, to which the L. C. J. B. gave this answer, That they could not do it, for that the Lieutenant of the Tower kept it for his own indempnity, and they could not command it from him.

Then they began the Examination of the Witnesses.

First, Mr. *Blackthwait* was examined, who produced a Paper, and his Testimony was to this effect, that he received the same from Mr. *Gwyn* another of the Clarks of the Council, who told him that he seized that Paper amongst others in the E. of *Shaftesburies* House, and that Mr. *Gwyn* gave him the Key where the Papers that were seized, were kept, and that it had been altogether in his Custody, except a little time that Sir *Lionel Jenkins*, one of His Majesties Secr. of State had it, who re-delivered it him again, that when he was ordered by the Committee of Examinations, he brought the Trunk and Papers into the Council Chamber, and they were opened in the presence of several Lords, and of Mr. *Wilson*, who was appointed to attend on the behalf of the E. of *Shaftesbury*, and that this Paper was taken out of a velvet bag that was in the Trunk on the 6th of *July* last.

Then was called Mr. *Gwyn*, who informed the Court to this purpose, That on the 2d of *July* last past, he was commanded by a Warrant from the Secretary, to go to the E. of *Shaftesbury's* House to search his Papers, and that he there met with a great many Papers, which he put into a Trunk, and delivered it, with the Key of it, to Mr. *Blackthwait*, but knew not how the Papers were divided and taken out afterwards ; and doth further say, that there was nothing in the Velvet Bag, but what he took in the E. of *Shaftesbury's* Closet.

Then Sir *Lionel Jenkins* testified, that that was the Paper among others that was delivered into his Hands by Mr. *Blackthwait* in the Council Chamber, and declared that the same had not been altered after it came to his Hands.

Then the Paper was read, the purport whereof was the Form of an ASSOCIATION, to be entred into by as many of the King's Subjects as pleased, for the defence of the King's Person, the Protestant Religion, and the Laws of the Land, against the D. of *Y.* and all that adhere to Popery and Arbitrary Power.

The next Witness produced was *John Booth*, who swore to this effect: That in *January* last he was introduced into the E of *S's* acquaintance by one Capt. *Hen. Wilkinson*, occasioned by the said Captain's having received a Commission from the E. of *S.* and others, to be Deputy Governour of *Carolina*, with whom the said *John Booth* was to go, and had several Discourses with the E. of *S.* thereupon; but afterwards growing into further acquaintance with his Ldship, & talking with him of Dissolving of Parlm & Arbitrary Power, & the fear of Popery, when Memb. were chosen to serve in Parlm. he would often say, that he had considered the Parlm. that was to meet at *Oxford*, the persons elected, their Inclinations and dispositions, that they would insist on the same things that

the

the *Parliaments* had done who went before them, particulary the *Bill* of *Exclusion*, and abolishing the 35th of *Eliz.* and his Majesty giving his Assent to a *Bill* whereby the *Protestant Dissenters* might be freed from the *Ecclesiastical Punishments* they are liable to. That he said further, That if these were past, he believed then that they would be very willing to grant the *King* such Accommodations of Money, as his necessary occasions should require: But without this, he believed there would be a Breach betwixt the *King* and the *Parliament*. And he feared the contrivance of the *Parliaments* sitting at *Oxford*, was to over-awe them; and therefore said, That he and divers *Lords* and *Members* of the *House* of *Commons*, had considered their own safety. He for his own particular had prepar'd 50 men, which he committed to the command of Capt. *Wilkinson*; and if there should have chanc'd to have been a Breach betwixt the *King* and *Parliament*, that if there were any violence offered, all the rest had provided as well as he; and that they would repel the force, and purge the Guards of all *Papists* that were Enemies to the *Protestant Religion*, and the estahlish'd Laws of the Land. And likewise, that they did intend by these Forces to take from the *King* those *Evil Counsellors*, as he call'd them, the Marquis of *Worcester*, the E. of *Clarendon*, the E. of *Hallifax*, the E. of *Feversham*, and the L. *Hide*; who were particularly named to give the *King* evil Advice: And then that they did intend to bring the *King* hither, that so all things might be setled for the security of the *Protestant Religion*, and providing against *Popery* and *Arbitrary Power*. That Capt. *Wilkinson* did desire him to be one of them, and did request that he would provide for himself Horse and Arms, and that Capt. *Wilkinson* would provide a Horse for his Man; and that he did provide all; and that things happen'd at *Oxford* as my L. *Shaftsbury* had predicted. But it was neither believ'd nor imagin'd that they would have been so soon dissolved as they were. On Thursday Capt. *Wilkinson*'s expected Summons to go down to *Oxford* with those men that were ordered him by the E. of *Shaft.* came; and on the Tuesday following News came of the Dissolution of the *Parliament*. All this he saith he first discovered to one *Walter Bains*, and then writ down his Information with his own hand, and sent it to the *Secretary* Sir *L. Jenkins*.

The next Witness produced, was *Edw. Turbervile*, who saith, That about the beginning of *February* last, he went to desire my L. *Shaftsbury* to assist him in the getting in some Money that was then behind and unpaid by the *King*; and that he did then say, there was little hopes of any good from the *King*, so long as he hath any Guards about him: For were it not for his Guards, they would

quickly go to *Whitehal*, and soon compel him to do what they would have him.

Next came *John Smith*, the substance of whose Testimony was, That he had oftentimes heard my L. *Shaftsbury* speak very reflecting on the King, That he was a weak man, unconstant, unsetled, a man of no firm resolution, a man that was wholly led by the Nose as his Father was before him, by a *Popish Queen* to his ruine; That the E. of *Shaftsbury*, hearing that the King should say that he the E. of *Shaftsbury* was the great Contriver and Promoter of the Rebellion in *Scotland*, the E. of *Shaftsbury* made this Answer, That the King did not see his own danger; and bid them tell the King, That if he had a mind to raise a Rebellion, he could raise another kind of Rebellion than that in *Scotland*. He further saith, That my L. *Shaftsbury* sent for him by one *Manly*, and when he came, he told him, That he sent to him upon the account of the *Irish Witnesses*, because Mr. *Hetherington* had been with him, and told him, he was afraid they would go over to the Court, and retract what they had said formerly; and told him, That that he would have him do, was to dissuade them from going over; for that Rogue *Fitz-Gerald* was pampered up by the Court-Party to stifle the Plot; And that there could be no other design at Court, appeared by the many Prorogations and Dissolutions of Parliaments. That the *Popish Plot* in *England* was gone; that there will be an *Act of Oblivion*, and then comes in *Popery*: for we are all satisfied that the King is as much concern'd in bringing in *Popery*, as the *Duke* is. That pursuant to the E. of *Shaftsbury*'s instructions, he met *Hetherington* and the *Irish Witnesses*, and laid before them the horrid Crimes that *Fitz-Gerald* was guilty of in denying the *Plot*; and told them what a Crime it was for them to come into his company: Upon which, they promised that they would never come neer him more. That he went with *Hetherington* and *Dennis* before Sir *Patience Ward*, the then Lord Mayor, and that *Dennis* swore, that *Fitz-Gerald* had been tampering with divers of the *Irish Evidence*. That he carried the *Information* to my L. *Shaftsbury*, who was mightily pleased with it, and uttered himself in these words: Do not you see the villany of the *Popish Party* and that Faction; and that the King runs the same way his Father did; and that he is led by a *Popish Queen* as his Father was, and doth not see his danger, nor will not, till he comes to the same End his Father did? And that before the *Parliament* went to *Oxford*, falling into some other Discourse with the said Earl, he said, That there was great preparation made to terrifie the *Parliament*, and to make them com-

ply

ply with the *King*; but that will not do, though 'tis plain, that by removing the *Parliament* thither they intend to bring in Popery: But we have this advantage, that if he offer any violence, as 'tis suspected he will, we have the Nation on our side, and we may very lawfully depose him; and all the Gentlemen of the *House of Commons* will be well horsed and armed, and especially the *City-Members*, who will have so many men sent on purpose to wait upon them: And he declared that he would die rather than not accomplish the Design: Whereupon *Smith* told him, that would ruine Monarchy; and his Lordship replied, No doubt on't; but yet he would stand and fall by it.

Next stood up *Brian Hains*, who agreed with *Smith*, that my L. *Shaftsbury* had oft vilified the King in his hearing; and told him, that if he would swear the Murder of Sir *Edmundbury Godfrey* upon the E. of *Danby*, they would make their applications to the King for a Pardon for him. To which *Hains* replied, That he was sure the King would never grant it, because he had prorogued and dissolved so many Parliaments for the E. of *Danby*. Do not fear it, says the E. of *Shaftsbury*, for if he doth not grant it, the whole Kingdom will rise in Arms against him, and this is the best time for it in the world; and if he do not do it, he cannot expect to be long King of *England*: And that he asking him whether he should go beyond Sea, No, replied the Earl, he dare as well be hang'd as meddle with you. Afterwards, being in close conference with the Earl one day, and having given him so exact an Account of all the Transactions from the commencement of King *Charles* the First's Reign to this very day, he was mightily satisfied with it: Pray, my Lord, said he, what do you intend to do? Why, replies the Earl, there are Families enough in *England* that have as much right to the *Crown* as the King; particularly the D. of *Bucks*, who hath a right to the Barony of *Ross*, and in that right to the *Crown* of *England*.

Then appeared *John Macnamarra*, who testified to the Jury, that my L. *Shaftsbury* should say, That the King was Popishly affected, and adhered to Popery, and took the same methods his Father did, that had brought his Father's Head to the Block, and would do his too; and that this he had told divers persons of Quality five years ago. He said that the King was a faithless man, and there was no credit to be given to him; and that the D. of *Mazarine* was his Cabinet-council, who was the worst of women; and that the King did deserve to be deposed as much as *Rich.* the 2d.

Dennis Macnamarra's Evidence was much the same.

Edw. Ivy swore, that the Earl told him, That the King was an unjust

unjuſt man; and not fit to reign; that he was a Papiſt in his Heart, and did intend to introduce Popery; and that they did intend to depoſe him for his injuſtice to his People; and that he brought *Haine* into his Lordſhip's acquaintance, who was by his inſtigation to ſwear the Murder of Sir *Edmundbury Godfrey* againſt the E. of *Danby*, the Duke, and the Queen; and then he promiſed to take care of him.

Laſtly appeared *Bernard Dennis*, who after a long Harangue to little purpoſe, ſpoke to this effect; That diſcourſing with the E. of *Shaftsbury*, he asked him how many ſtout able men there were of his name in his County? He told him about three or four hundred. Saith the Earl, I would willingly have your advance them of your own name and Friends, by being in a readineſs when occaſion ſhall happen, and to ſtand by us; for we intend to have *England* a *Commonwealth*, and to live in *England* as they do in *Holland*; and to have no Supream Head, no particular man for King, nor owe obedience to a Crown: And that he ſaid they would extirpate the King and all his Family; and that he wondred that other Nations would be ſuch Fools as they were, for it is certain that Q. *Elizabeth*, K. *James*, K. *Charles* the Firſt, and the now King wronged them; and that if they had been under a Commonwealth, they would have taken more care of them than the King doth; and the people of *England* are fools that they do not uſurp againſt the Crown of *England*.

Then the *L. C. J.* acquainted the *Jury* that the *Kings Council* would examine no more *Witneſſes*, therefore if they deſired to ask any of the *Witneſſes* any thing, they ſhould have them all called for one by one.

Then Sir *Samuel Bernardiſton* deſired that they might have leave to go out and conſider of what Queſtions to ask: And the *Jury* deſired to know what *Statute* or *Statutes* the *Bill* was founded upon? My *L. C. J.* anſwered them, That that which is *Treaſon* within the *Statute* of the 25 of *Edw.* the 3d, is *Treaſon* within the *Statute* of the 13 of this King; ſo that this is more copious, in that it hath enlarged that in many particulars; and therefore when one *Statute* contains the matter of a former, and enlarges it, the *Indictment* is always upon the laſt. But my *L. C. J. North* diſtinguiſhed where the *Indictment* is laid *Contra formam Statuti, & contra formam Statut.* for in the firſt Caſe it extends but to one ſingle Statute; and in the laſt, to all that concern the ſame matter.

Sir *Samuel Bernardiſton* deſired they might ſee the *Affidavits* of *Subornation* that were made againſt ſeveral of the *Witneſſes*. To which the *Court* replied, That

That the credibility of the Witneſſes is not a matter proper before them, but only upon a Tryal, for there the King will be armed to defend the credit of his Witneſſes, if any thing be objected againſt them. That they are only to ſee whether the Statute be ſatisfied in having matter that is Treaſonable before them, and teſtified by two Witneſſes.

Mr. *Papilion* told the Court they deſired only that which was proved, and if there be ſuch Informations in Court, they being things proved they deſire to ſee them; and the Court telling them that they could not grant it, they being things not within the compaſs of their Inquiry, it was asked by Mr. *Papilion*, whether they were not to exerciſe their own reaſon and Conſciences; To which the Court replyed, that any thing that was of their own knowledge they ought to take into conſideration;

My *L. Chief Juſt. North* told them, that a Grand Jury is to hear no Evidence againſt the King, it is not the courſe. That is to be upon the Tryal before the Petty Jury, therefore for you to enter into a nice Examination of the Credit of the witneſſes is not to be ſuffered.

Then the Court adjourn'd till three in the Afternoon.

The Court being again ſate, and the Grand Jury come in, they proceeded to interrogate the Witneſſes one by one.

Mr. *Gwyn* was firſt Examined, who put up the Earl of *Shaftſburies* Papers? He anſwered he did it himſelf. Being asked whoſe hand writing it was? He anſwered he knew not. Being asked whether there was a talk of a *Bill* of Aſſociation, or that he had heard of it? He anſwered, Yes.

Secr. *Jenkins* being ask'd the ſame queſtion, ſaid he was not preſent at the debate, he was not certain, he did not remember the particulars. Being asked whether he was preſent when the Aſſociation in *Q. Elizabeths* time was read in the Houſe of Commons, anſwered no. When he was asked when my Lord was committed, he anſwered he referred himſelf to the Warant, but being asked the ſame queſtion, by my *L. Chief Juſt. Pemberton*. He anſwered that he referred himſelf to the Serjeant at Arms, but he thought it was in *July*. Being asked whether all the Witneſſes were Examined before the Commitment? He anſwered, he did not know whether all or no, but ſeveral of them were, but how many he could not tell.

Then *Booth* was call'd for by the *Jury*, but not appearing they ſaid a Tipſtaff was gone for him, which gave occaſion to Sir *Samuel Barnardiſton* to ask whether he was a Priſoner or no, to

which the *Attorny General* replied, yes for debt. But at length he appeared, and being asked what time it was that he had the diſcourſe with my Lord *Shaftsbury*, and where? He anſwered at his own Houſe, a week or ten days before the Parliament ſate at *Oxford*. Being asked who was preſent he anſwered no body but my Lord and himſelf. When he was asked how often he had been there, he ſaid five or ſix times. Being asked how long it was after my Lord ſpoke the words before he diſcovered them, he ſaid ſeven Weeks. Being asked whether he was Examined before his Commitment? He anſwered, No. Being asked to whom he gave his Information? He anſwered to the Lords of the Council. And being asked by whom he conveyed his Information? He anſwered by *Bains*, and whether he knew any more of my Lords Guard of 50 men then Captain *Wilkinſon*? He anſwered no.

Then *Turbervil* was called and asked who was preſent when my Lord ſpoke thoſe words to him? He anſwered one of the Servants that uſed to dreſs my Lord, and no body elſe by, that he doth remember. Being asked when it was that my Lord ſpoke the Words? He ſaith the ſixth of *February*, to the beſt of his remembrance in the Morning. Being asked how long twas before he diſcovered it? He anſwered the 4*th*. of *July* after. Being asked to whom the Information was given? He ſaid to Mr. *Secr. Jenkins*. Being asked whether my Lord was committed before or after his Information? He ſaid he could not be poſitive, but he beleived before.

John Smith was called and asked whether he did not uſe to go by the name of *Barry*? To which he anſwered he had gone by ſeveral names, and ſo do all Popiſh Prieſts. Being asked what Religion he was of? he ſaid he was a Proteſtant. Being ask'd how long? he ſaid many a year. Being asked when he was converted? he ſaid, he was firſt a Proteſtant, then perverted to the Popiſh Religion, and then turn'd Proteſtant again. Being ask'd when he receiv'd the Sacrament? he ſaid three months ago. Being ask'd when he gave his Evidence firſt, and to whom? he thinks after the Commitment, but is not poſitive, and he gave it into Secretary *Jenkins*.

Bernard Hains being ask'd when he gave in his Information and to whom? he anſwered to Secretary *Jenkins* juſt before my Lord was committed. Being asked whether he gave in an Information of a deſign againſt my Lord of *Shaftsbury*? and to whom? he anſwered, he did to Sir *George Treby*: and being asked when? he anſwered in *March*? and being asked when my L. *Shaftsbury* ſpoke

theſe

theſe words, he anſwered, a little before he made that Affidavit to Sir *George Treby*.

John Macnamarra being asked when he had this diſcourſe with my L. *Shaftsbury*, he anſwered the latter end of *March* or the beginning of *April*. Being asked when he gave this Information in? he ſaid before his Commitment, and being ask'd to whom? he ſaid to Sir *Lionel Jenkins*. Being asked whether he did petition the *Common Council*, he owned that he ſigned a *Petition*, but ſaid he knew not what was in it. But Mr. *Papilion* inform'd the Court, that they did ſuggeſt themſelves in that Petition, that they were tampered with to be ſuborn'd, and therefore prayed relief from the *City*,

Denis Macnamarra being ask'd how he came to my Lord? he ſaid by his Brother. Being asked when it was? he ſaid the latter end of *March* or the beginning of *April*. Being asked who was with him? he ſaid only Mr. *Ivy* and his Brother. Being ask'd when he gave in his Information? he acknowledged it to be before the Earls Commitment. Being asked to whom, he anſwered to Secretary *Jenkins*.

Edward Ivy being asked what time he had this diſcourſe with the Earl? he ſaid a little after the ſitting of the Parliament at *Oxford*. the latter end of *April* or the beginning of *May*. Being asked who was by? he ſaid both the *Macnamarra*'s only. Being asked when and to whom he gave his Information? he anſwered before my Lords commitment, and to Secretary *Jenkins*.

Bernard Denis being asked when my Lord ſpoke the words? anſwered four or five dayes after the Parliament was diſſolved at *Oxford*. Being asked when he made the Information and to whom? he ſaith to Sir *Lionel Jenkins* in *June*. Being asked why he concealed it ſo long? he ſaith becauſe he was in the City. Being asked whether ever he went about his four hundred men in *Ireland*? he ſaith he did adviſe them to be ready. Being asked what Religion he is of? he ſaith a Ptoteſtant ever ſince *February* laſt.

The laſt eight being every man of them asked ſeverally and apart upon their particular Examinations, where my Lord ſpoke this *Treaſon*, they all ſay he ſpoke the Treaſon in his own houſe, except *Brian Hains*, who ſaith, that at another time, he heard him ſpeak Treaſon in *Iron-monger* Lane. And being all asked whether they have heard him ſpeak any other Treaſon in any other Place, or at any other time, than is in their particular Examination ſet forth, they all anſwered, that they did not.

And

And being all particularly interrogated further, whether they had any thing as a preſent Reward, or any allowance from any Perſon for the ſwearing againſt the E. of *Shaftsbury*: They all anſwered, No.

Upon the whole matter, twenty of the Jury (Mr. *Tho Parker* being ſick and excuſed) for what reaſons he that reads this Information may eaſily gather, brought in the Bill IGNORAMUS.

And now, Reader, take this as the ſubſtance of what was at the *Old Baily* more fully tranſacted, and out of it obſerve for the Vindication of the Grand Jury in bringing in the Bill *Ignoramus*, that the Lord Cheif Juſtice *Pemberton* did, upon the Grand Juries Requeſt that the Court would inform them upon what Statute the E. of *Shaftsbury* was Indicted, declare that it was upon 13 *Car.* 2. *Cap.* 1. *By which it is Provided, that no Perſon or Perſons by Virtue of the ſaid Act, ſhall incur any of the Penalties therein before mentioned, unleſs he or they be proſecuted within ſix Months next after the Offence committed, and Indicted thereupon within three Months after ſuch Proſecution, any thing in the ſaid Statute to the contrary thereof in any wiſe notwithſtanding.* And if you pleaſe to examin the time in which the *Witneſſes* ſwear the E. of S. ſpoke the ſaid Treaſonable Words, it will appear, that though he was proſecuted within ſix Months after the ſpeaking of the ſame, yet he was not Indicted within three Months after the Proſecution; and if ſo, by the particular Proviſion of that Law, cannot incur the Penalties inflicted by it; which if granted, (as it cannot well be denied) the *Grand Jury* muſt have done very ill to bring in *Bills Vera*; this Law being a general Law, of which they, amongſt the reſt of the *Kings Subjects*, are bound to take notice: But beſides that, 'tis very plain if you pleaſe to obſerve it, that there is a flat Contradiction in the Teſtimony of *John Macnamarra*, *Dennis Macnamarra* and *Edward Fey*; for upon the *Grand Juries* Examination of them apart (altho in their firſt Examination in Court, they ſwear the words at the ſame time and place, *&c.*) yet the ſaid *John* and *Dennis Macnamarra* ſwear the words ſpoken by the E. of *Shaftsbury* at his own houſe, the latter end of *March* or the beginning of *April*, and *Edward Fey* ſwears them ſpoken the latter end of *April* or the beginning of *May*; and yet all agree that the words were ſpoke but once, and then in the preſence of all three: But I ſhall inlarge no further, but leave the Reader to make his own remarks, leaſt I ſhould be thought to call in queſtion, the Loyalty and Integrity of perhaps the moſt able, judicious and honeſt Juries that has been of late years returned in the City of *London* or elſewhere: and if thou art as well pleaſed in the reading, as I have been in the obſerving of theſe things, it will be no ſmall ſatisfaction to

Philonomus.

FINIS.

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